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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,256	01/04/2006	Robert Wilfer	2901886-000025	6429
84331 7590 07/07/2009 Baker Donelson Bearman, Caldwell & Berkowitz, PC 555 Eleventh Street, NW, Sixth Floor Washington, DC 20004				
EXAMINER O HERN, BRENT T				
ART UNIT		PAPER NUMBER		
1794				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/563,256

**Applicant(s)**

WILFER ET AL.

**Examiner**

Brent T. O'Hern

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-6 and 8-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,2,4-6 and 8-23 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claims***

1. Claims 1-2, 4-6 and 8-23 are pending with claims 21-23 new.

## **WITHDRAWN REJECTIONS**

2. All rejections of record in the Office Action mailed 10/3/2008 have been withdrawn due to Applicant's amendments in the Paper filed 2/2/2009.

## **NEW REJECTIONS**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

### ***Claim Rejections - 35 USC § 102***

3. Claims 1-2, 4, 6, 8-9, 15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hisazumi et al. (US 4,764,406).

Regarding claims 1-2 and 8, Hisazumi ('406) teaches a smoke and water vapor permeable tubular food casing (*See Abstract and col. 3, ll. 16-30 and col. 4, ll. 20-21, tubular.*) made of polyamides and copolyamides (*See Abstract, col. 3, ll. 16-30, col. 8, ll. 12-24.*) which are impregnated with liquid smoke on the food-facing side (*See col. 8, ll. 12-45 wherein the sausage is smoked with the smoke residue that adheres to the sausage is interpreted as being liquid smoke otherwise the smoke would dissipate without the smoke having a smoked flavor.*), and (*See Abstract, col. 3, ll. 16-30, col. 8, ll. 12-24.*), and at least one thermoplastic other polymer or copolymer, wherein the thermoplastic other polymer or copolymer is hydrophilic and swells under the action of water or water vapor (*See Abstract, col. 3, ll. 16-30, col. 8, ll. 12-24 wherein the*

*hydrophilic copolymer is ethylene-vinyl alcohol. See also p. 7, ll. 12-13 of Applicant's Specification where Applicant discloses ethylene-vinyl alcohol as being hydrophilic. Thus, the ethylene-vinyl alcohol as taught by Hisazumi ('406) is interpreted as being hydrophilic. Since the material is the same hydrophilic polymer as Applicant discloses in the Specification as swelling then Hisazumi's ('406) material is also interpreted as able to swell.).*

Regarding claim 4, Hisazumi ('406) teaches the casing being made from polycaprolactam (nylon 6) (*See col. 6, ll. 42-45 and col. 8, ll. 12-25.*).

Regarding claim 6, Hisazumi ('406) teaches wherein the fraction of the component a) in each case based on the total weight of the mixture is 40 to 90 % by weight (*See col. 3, ll. 16-30.*).

Regarding claim 9, Hisazumi ('406) teaches wherein the fraction of the component b) in each case based on the total weight of the thermoplastic mixture, is 10 to 60 % by weight (*See Abstract, col. 3, ll. 16-30.*).

Regarding claim 15, Hisazumi ('406) teaches the casing being multilayered (*See Abstract and col. 3, ll. 16-30.*).

Regarding claim 20, Hisazumi ('406) teaches wherein the food casing contains a smoked sausage or cheese (*See col. 7, ll. 25-31.*).

***Claim Rejections - 35 USC § 102/103***

4. Claim 14 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hisazumi et al. (US 4,764,406).

Hisazumi ('406) teaches the casing discussed above and inherently teaches the product having a water vapor permeability (WVP), determined as specified in DIN 53 122, with air impinging the casing on a single side at 23°C and at a relative humidity of 85 %, is at least 30 g/m<sup>2</sup>d (See col. 3, ll. 27-30 where Hisazumi ('406) teaches a WVTR of not more than 70 g/m<sup>2</sup>d at 40°C and at a relative humidity of 90 %, thus, a person having ordinary skill in the art would reasonably infer that the water vapor permeability (WVP) would be at least 30 g/m<sup>2</sup>d under the above conditions as the structure of the casing would not change to such an extent that the WVP would decrease below the claimed range as the intent of the casing is for it to be effectively permeable to smoke.).

In the alternative, a person having ordinary skill in the art would obviously appreciate or provide the casing with the above permeability so as to provide a sausage and casing that is effectively permeable to smoke and provides a smoky sausage that tastes good. Thus, a rejection under 35 USC 102/103 is proper (See MPEP 2112.).

**Claim Rejections - 35 USC § 103**

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hisazumi et al. (US 4,764,406) in view of Delius et al. (US 2002/0065364).

Hisazumi ('406) teaches the casing discussed above, however, fail to expressly disclose wherein the polyamide or copolyamide forms therein a coherent phase.

However, Delius ('364) teaches a sausage casing (See Abstract.) having a polymer blend with a coherent phase made from an aliphatic copolyamide (See Abstract and paras. 18-24.) for the purpose of providing a moist food/sausage (See para. 11.).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made that Hisazumi's ('406) casing is coherent since it is the same as claimed or it would have been obvious to provide a polymer blend with a coherent phase made from an aliphatic copolyamide as taught by Delius ('364) in Hisazumi ('406) in order to provide a moist food.

6. Claims 10, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisazumi et al. (US 4,764,406) in view of Okudaira (US 6,294,263).

Regarding claims 10 and 13, Hisazumi ('406) teaches the casing discussed above, however, fails to expressly disclose wherein the thermoplastic mixture additionally contains at least one organic or inorganic filler and wherein the fraction of the filler, in each case based on the total weight of the thermoplastic mixture is not greater than 40 % by weight.

However, Okudaira ('263) teaches sausage casings (*See col. 7, ll. 46-60.*), having at lease one inorganic and/or organic filler (*See col. 6, ll. 51-59.*) and wherein the filler is not greater than 40% by weight (*See col. 6, ll. 58-59.*) for the purpose of providing casing with improved lubricity and mechanical properties (*See col. 6, ll. 51-54.*).

Therefore, it would have been obvious to a person having ordinary skill in the art to incorporate the materials with the above amount as taught by Okudaira ('263) in Hisazumi ('406) in order to provide a casing having improved lubricity and mechanical properties.

Regarding claim 16, Hisazumi ('406) teaches the casing discussed above, however, fails to expressly disclose the casing being biaxially stretched and heat set.

However, Okudaira ('263) teaches a tubular and seamless casing (*See col. 7, ll. 55-60.*), biaxially oriented (*See col. 7, ll. 16-30.*) and a heat-set polyamide-based food casing (*See col. 7, ll. 7-15.*) for the purpose of providing a fatigue resistant casing (*See col. 1, ll. 54-62.*).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made that Hisazumi's ('406) casing has the above properties since the casing is the same or it would have been obvious to provide Hisazumi's ('406) casing with a polyamide having the above properties as taught by Okudaira ('263) in order to provide a casing that is fatigue resistant.

7. Claims 10-13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisazumi et al. (US 4,764,406) in view of Anderson et al. (US 6,231,970).

Hisazumi ('406) teaches the casing discussed above, however, fail to expressly disclose wherein the thermoplastic mixture additionally contains at least one organic or inorganic filler, wherein the inorganic filler comprises quartz powder, titanium dioxide, talcum, mica and other aluminosilicates, glass staple fibers and other mineral fibers and/or glass microspheres, wherein the organic filler is a polysaccharide, and wherein the polysaccharide is starch, cellulose, exo-polysaccharides, a polysaccharide derivative, crosslinked starch, starch ester, cellulose ester, cellulose ether, or carboxyalkylcellulose ether and not greater than 40% by weight.

However, Anderson ('970) teaches a tubular food casing having inorganic fillers such as titanium dioxide and glass fibers or organic fillers such as carbohydrates, polysaccharides, and/or a derivative thereof (*See col. 18, l. 65 to col. 19, l. 33, col. 25, ll. 14-18, col. 26, ll. 62-66, col. 27, ll. 10-16, col. 28, l. 34+, col. 31, ll. 33-48 and col. 33, l. 32+.*) with the above amount of filler (*See col. 18, ll. 57-64 and col. 20, ll. 46-55.*) for the purpose of providing a casing with swellable materials that are cost effective and easy to process (*See col. 19, ll. 1-33.*).

Therefore, it would have been obvious to a person having ordinary skill in the art to incorporate the materials as taught by Anderson ('970) in Hisazumi ('406) in order to provide a casing that is swellable, cost effective and easy to process.

**8.** Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisazumi et al. (US 4,764,406).

Regarding claim 17, Hisazumi ('406) teaches the casing discussed above, however, fails to expressly disclose the liquid smoke being acidic, however, it is known in the art that smoke generated during smoking is acidic (*See Abstract, col. 3, ll. 16-30 and col. 8, ll. 12-45.*), therefore, it would have been obvious to provide a smoke that is acidic in order to provide a pleasant tasting sausage.

Regarding claim 19, Hisazumi ('406) teaches the casing discussed above, and a method of making a water-vapor- and smoke-permeable tubular casing based on polyamide, however, fails to expressly disclose closing the casing and storing the stuffed casing.



However, it would have been obvious to close the above stuffed casing and store the product so as to provide a sanitary product that is isolated from dirt and ready for sale as opposed to having a customer wait for the sausage to be made. Therefore, it would have been obvious to close and store Hisazumi's ('406) product in order to provide a clean and ready to clean/use product.

**9.** Claims 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisazumi et al. (US 4,764,406) in view of Hammer et al. (US 5,501,886).

Hisazumi ('406) teaches the casing discussed above, however, fails to expressly disclose the casing being shirred and seamless.

However, Hammer ('886) teaches tubular, seamless, shirred sausage (*See col. 5, ll. 10-13 and col. 10, ll. 57-60, seamless and shirred.*) for the purpose of providing a pliable material that can easily be stored and handled (*See col. 12, ll. 5-9.*).

Therefore, it would have been obvious to use casing that are seamless and shirred as taught by Hammer ('886) in Hisazumi ('406) in order to provide a material that is pliable and can easily be stored and handled.

**10.** Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hisazumi et al. (US 4,764,406) in view of Krallmann et al. (US 2003/0059502).

Hisazumi ('406) teaches the method and food casing discussed above, however, fail to expressly disclose wherein the food is a sausage emulsion or raw sausage emulsion.

However, Krallmann ('502) teaches an encased smoked sausage emulsion (*See para. 34.*) for the purpose of providing an encased smoked sausage (*See para. 2.*).

Therefore, it would have been obvious to produce an encased sausage emulsion as taught by Krallmann ('502) in Hisazumi ('406) with the method discussed above in order to provide an encased tubular sausage.

#### **ANSWERS TO APPLICANT'S ARGUMENTS**

11. In response to Applicant's arguments (*See pp. 5-9 of Applicant's Paper filed 2/2/2009.*) regarding Smith ('868), Hutschenreuter et al. (US 4,528,225) and the Basic Sausage Internet publication, it is noted that said references are no longer cited, thus, arguments regarding them are moot.
12. In response to Applicant's arguments (*See p. 7, paras. 2-4 of Applicant's Paper filed 2/2/2009.*) that Okudaira ('263) does not teach a permeable casing, it is noted that the newly cited Hisazumi ('406) reference teaches the permeable polyamide film while Okudaira ('263) is now cited for teaching the fillers and properties found in polyamide films as a result of processing.
13. In response to Applicant's arguments (*See p. 8, paras. 1-2 of Applicant's Paper filed 2/2/2009.*) regarding Anderson ('970) and claim 8, it is noted that Anderson ('970) is no longer cited for this claim, thus, Applicant's arguments are moot.
14. In response to Applicant's arguments (*See p. 8, paras. 3-5 of Applicant's Paper filed 2/2/2009.*) regarding claim 5, it is noted that the first two references are no longer cited for this claim and the arguments regarding Delius ('364) are no longer applicable to the new rejection.
15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BTO/  
Brent T. O'Hern  
Examiner  
Art Unit 1794  
July 1, 2009

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794